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CURRENT TOPICS

Twelfth Night and the Law

THOSE who love both law and letters found an opportunity to celebrate their devotion as well as their loyalty to the Crown on 2nd February, when a QUEEN ELIZABETH witnessed in Middle Temple Hall the production of a play called *Twelfth Night*, by a playwright called William Shakespeare. Whether the occasion was the 349th or 350th anniversary of the first production we leave to be determined by those who take pleasure in niggling over such relatively trivial questions of fact. The substance of the matter is that the second occasion is an event in the history of both law and letters, and to the gracious presence which inspired the production much gratitude is due. The performances of celebrated actors and musicians such as Mr. DONALD WOLFIT, Miss ROSALIND IDEN, Mr. CARL DOLMETSCH and Mr. BRYAN JOHNSON, to mention only a few of the distinguished company that presented the play, were well worthy of the occasion. Certainly also a tribute should be accorded to Mrs. HELENA NORMANTON, K.C., whose erudite article in *The Times* of 2nd February raised doubts whether the first Queen Elizabeth in fact attended the first production of *Twelfth Night* in Middle Temple Hall. This need not trouble lawyers overmuch. Equity regards that which ought to be done as done, and we doubt not that this was not less so in Good Queen Bess's glorious days.

Status of Hospital Property

A QUESTION dealt with in "Points in Practice" in our issue of 27th January (95 SOL. J. 63) referred to a tenancy of a building having become "vested" in a hospital management committee by virtue of the National Health Service Act, 1946, and the question was answered on that footing. The legal adviser to a regional hospital board has since written pointing out that the phenomenon described by the questioner must be a rare one. Perusal of the legislation concerned bears him out. The function of such a committee is that of control and management on behalf of such a board (s. 12 (2)) whose own functions are management and control (s. 11 (3)) of what has been transferred to and vested in the Minister of Health (s. 6 (1)). Such functions fall far short of those entrusted to the British Transport Commission by the Transport Act, 1947, elaborately defined in that statute, s. 14 (2) in particular covering proprietary rights: in *Tamlin* v. *Hannaford* [1949] 2 All E.R. 327 (C.A.), indeed, Denning, L.J., said of the Commission that it may *own* property; and the effect of the decision was that though it might be an emanation from, it was not an agent of, the Crown. Though the learned lord justice also contrasted the Commission's status with that of the Territorial Army Association (defence always a province of Government) and that of the Post Office (carriage of mail a Crown monopoly of long standing) and it might be difficult to draw a contrast either way in the case of the regional boards and management committees created by the National Health Service Act, the fact stands out that nothing corresponding to the British Transport Commission comes between the Minister of Health and the public. It is also significant that s. 13 (2) of the

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National Health Service Act expressly deprives the boards and committees of Crown privilege in respect of discovery and production of documents, and thus, it might be suggested, impliedly recognises their status as agents of the Crown.

The Provision of Dustbins

SINCE the publication of an exhaustive review of the case law on this topic in (1949), 93 SOL. J. 638, the number of cases which have been brought before the magistrates for their decision has greatly increased. In the great majority of cases, notices requiring landlords to provide dustbins are quashed, and the recent increases in costs are likely to incline magistrates still further to regard this burden as one which might well be placed on the tenant in view of the continued protection of rents. The Birmingham City Council, traditionally progressive in so many other directions, has also shown a lead in this vexed question. The council decided some time ago to avoid disputes by providing dustbins free of charge, the cost to fall on the rates. During a period of eight months orders were sent to the various depots of the council for the delivery of 31,836 dustbins. In every case a member of the refuse collection supervisory staff called on the householder concerned to ensure that a new bin was needed.

About Inquests

DURING the hearing on 2nd February of an application for an order of certiorari to quash the proceedings at an inquest, the LORD CHIEF JUSTICE, sitting with HUMPHREYS, J., and DEVLIN, J., in the Divisional Court, said that an affidavit had been filed by one of the jurors at the inquest. They declined to look at it, and the court regarded the matter with disfavour. Jurors were getting much too prone to make communications about what went on in the jury room and what particular view was taken by one or other of them. If that was allowed to go on it would destroy the whole benefit of trial by jury. Coroners' inquests are shortly to be the subject of an inquiry by a committee appointed by the Lord Chancellor and the Home Secretary. Its members and terms of reference are noted on p. 95, *post*.

Memorandum on Control of Mineral Workings

A MEMORANDUM prepared by the Ministry of Local Government and Planning on "The Control of Mineral Working" has now been published (H.M. Stationery Office, price 2s.). It explains the various Acts and Regulations on the subject, and gives guidance to local planning authorities on how they should exercise their powers of control. Five guiding principles are listed for the benefit of local planning authorities. They are (i) that mineral deposits which are likely to be needed should not be unnecessarily sterilised by surface building; (ii) that the necessary rights in suitable land should be made available to mineral undertakers, if necessary through the use of compulsory powers; (iii) that the working of minerals should be prevented or limited where it would involve unjustified interference with agriculture or other surface uses; (iv) that proper regard should be paid to the appearance of the countryside; and (v) that, wherever practicable, land used for mineral working should not be left derelict when operations have been completed. A long section of the document is devoted to the subject of attaching conditions to planning permissions, and it is supplemented by an appendix giving a number of examples. The various ways in which the power to impose conditions can be used are discussed and warnings are given on pitfalls to be avoided. The advice is based on past experience, but it is emphasised throughout that the conditions which may be attached to any planning permission must be decided according to the circumstances of the case. Compulsory acquisition of land and working rights, applications for planning permission, appeals, compensation and development charges are among the subjects with which the memorandum also deals. A comprehensive index is included.

The *Law Quarterly*: "1926-1951"

AMONG the many articles of absorbing interest in the current issue of the *Law Quarterly Review* there is a note by LORD WRIGHT headed "1926–1951." The appearance of this number of the *Law Quarterly*, Lord Wright observes, marks the entrance upon a new quarter-century of the editorship of it by Professor GOODHART. So far as Lord Wright knows, the *Review*, which was founded in 1885, was the first of its kind, and was followed shortly afterwards by the *Harvard Law Review*, and later by many others. A careful reader of the *Law Quarterly*, he writes, will be able to trace the changes both in the articles and the notes. As examples he cites the first note in the number for January, 1948, entitled "*Vale* the doctrine of common employment" and the note on "the cricket ball case" in the number for January, 1950. Lord Wright also mentions with approval a practice which the present editor took from his predecessor, Sir Frederick Pollock, of attaching to a note or article a homely description such as "the housemaid's case" or "dangerous things and the sedan chair." One might add the title "blowing hot and cold," which is the title of a note in the present issue on *J. F. Perrott & Co., Ltd.* v. *Cohen* [1950] 2 All E.R. 939, in which the writer of the note criticises that part of the judgment of Denning, L.J., which suggested that the defendant was bound by the principle stated in *Central London Property Trust, Ltd.* v. *High Trees House, Ltd.* [1947] K.B. 130. Other articles include a reprint of Professor ROSCOE POUND's address on American and English Law and one on Hearsay Evidence, by H. A. HAMMELMANN.

Recent Decision

In *Re Bland-Sutton Will Trusts*; *National Provincial Bank, Ltd.* v. *Middlesex Hospital Medical School and Others*, on 2nd February (*The Times*, 3rd February), the Court of Appeal (the MASTER OF THE ROLLS and JENKINS and HODSON, L.JJ.) considered the validity of a bequest where a testatrix gave the residue of her estate to provide an endowment fund first for the provision of a research scholarship and secondly to pay the income to the treasurer or other proper officer of the Middlesex Hospital for the maintenance and benefit of the Bland-Sutton Institute of Pathology, with an absolute gift over to the Royal College of Surgeons should the institute cease to be carried on as a pathological research institution or should its name be changed, or should the Middlesex Hospital become nationalised or by any means pass into public ownership, or if it should become unlawful to apply the income for the purposes aforesaid. The court held that the effect of the National Health Service Act, 1946, was to nationalise the Middlesex Hospital within the contemplation of the testatrix notwithstanding that the medical school and the institute remained free from national ownership and control, that the Royal College of Surgeons was not a body established and maintained for charitable purposes but for the promotion of the interests of a profession, and the gift over to the college was therefore void as offending against the rule against perpetuities, but that, since the rule in *Lassence* v. *Tierney* (1 Mac. & G. 551) operated to preserve the gift to the institute because the gift over was void, no claim could be made on an intestacy.

Costs

THE LEGAL AID SCHEME—III

WE were last considering the position under the Act and regulations which arises where the assisted person is awarded party and party costs against the opposite party under a judgment, order or agreement.

In the normal unassisted case, where a successful party is entitled to recover his party and party costs, his solicitor will make up a bill for taxation and then, when the costs have been taxed, he will make up another bill for his client, in respect of the solicitor and own client costs, which is in effect a full bill, including the party and party costs, and credit will be given at the end for the amount which he has recovered on taxation against the opposite party. This, at least, is the strictly correct way of dealing with the matter (see *Re Mercantile Lighterage Co.* [1906] 1 Ch. 491, and *Bury* v. *Greenwood* (1934), 177 L.T. News. 399), although it is not unusual for the successful party's solicitor to render a lump sum bill of costs under the authority of the General Order, 1920, in respect of the solicitor and client items only, without showing the amount of the costs recovered from the other party.

So far as assisted cases are concerned, however, it will be recalled that even in a case where the assisted person has been successful in the action his solicitor will have to tax not only the party and party costs but also the solicitor and client costs, the latter being taxed as between solicitor and client on the basis that the costs are being paid out of a common fund in which the client and others are interested. Thus, there will have to be a taxation on a dual basis.

In this respect attention may be drawn to the practice notes recently issued by The Law Society after consultation with the Supreme Court Taxing Office (94 SOL. J. 818). Paragraph 1 of these notes states that where an assisted person has been awarded costs against the opposite party, then his solicitor will lodge a four-column bill. Indeed, the bill will really contain six columns, two on the left-hand side and four on the right, with a space in between for the narrative of the bill. Necessarily, the space reserved for the narrative will be small, but this cannot very well be avoided.

Of the four columns on the right-hand side, the first two or inside columns will be reserved for the party and party items, the first column being for disbursements and the second for the professional charges. The two outside columns on the right-hand side are for any items of solicitor and client costs in excess of the party and party costs, again the first of these two columns being for the disbursements and the second for the profit costs. In bills for taxation in the Divorce Registry, on the other hand, the two inner columns on the right hand side are for the solicitor and client items which do not appear in the party and party columns, and the two outside columns on the right-hand side are for the party and party costs. So far as the two columns on the left-hand side of the paper are concerned, the first of these, that is, the column on the extreme left of the paper, is for the solicitor and client items taxed off, whilst the second or inside left-hand column is for the items of the party and party bill taxed off.

In bills drawn in this form there must be two summaries at the end, one for the party and party costs and one for the solicitor and client costs, and, since the solicitor and client columns in the bill will contain only the items which do not appear in the party and party columns, it follows that the total of the summaries of the two profit costs columns will give the full amount of the solicitor and client costs, 85 per cent. of which, in Supreme Court cases, will be payable to the solicitor out of the legal aid fund together with the full amount of the disbursements allowed. Eighty-five per cent. of the counsel's fees as allowed on taxation will be payable direct to counsel also by The Law Society out of the legal aid fund. Only one certificate of taxation or allocatur will be issued, and this will show, in an assisted case where the assisted person is entitled to recover costs from the opposite party, (1) the amount allowed in respect of the party and party costs, and (2) the solicitor and client costs divided as to (*a*) solicitor's profit costs, (*b*) counsel's fees, and (*c*) other disbursements allowed. The certificate belongs, of course, to the person paying the costs, that is, The Law Society.

So much then for the case where the assisted person is entitled to costs against the opposite party. Now let us examine the position where the costs are awarded against the assisted person. In the first place, s. 1 (7) (*b*) of the Legal Aid and Advice Act, 1949, provides that the rights conferred on a person receiving legal aid shall not affect the rights of other parties to the proceedings, so that in dealing with the question of costs the judge at the trial of an action, although he may be aware of the fact that the successful party is an assisted person, will not allow that fact to affect his mind when deciding whether or not to award costs (see *Daley* v. *Diggers, Ltd., and Another* [1950] 1 All E.R. 116).

This means that the decision to award costs will not be influenced by the fact that the successful party is an assisted person, but different considerations must be taken into account in determining the amount of costs which he is called upon to pay, for s. 2 (2) (*e*) of the Act provides that the assisted person's liability for costs under a judgment in the proceedings shall not exceed the amount, if any, which it is reasonable for him to pay having regard to all the circumstances, including the means of all the parties and their conduct in connection with the dispute.

There are thus two stages in connection with the costs where an assisted person is unsuccessful in the action. The first stage is for the court or judge to determine in principle whether costs shall be awarded to the successful party, without regard to the fact that the unsuccessful party is an assisted person. The next stage is for a determination to be made as to the amount which it is reasonable for him to pay, having regard to all the circumstances.

For guidance in determining what is a reasonable amount for the unsuccessful litigant to pay, we must turn to para. 17 of the General Regulations, 1950, subpara. (1) of which states that the determination of the assisted person's liability shall be made at the trial or hearing of the cause or matter. It is clear, therefore, that the court or judge responsible for the order as to costs will be the final arbiter as to the amount actually to be paid; and in arriving at a decision on this point the court or judge will take into consideration any certificate, notice or affidavit filed in accordance with para. 15 of the General Regulations, 1950; and in amplification of any such certificate, notice or affidavit, any party to the proceedings may, if the court thinks fit, be cross-examined as to the facts stated therein. Further, having arrived at a decision as to the amount which the assisted person should pay the other party by way of costs, the court may postpone the payment, or order the amount to be paid by instalments, if it thinks fit.

It will be observed that it is not only the circumstances of the assisted person that are to be taken into account in determining the amount that he is to pay by way of costs, for s. 2 (2) (*e*) of the Act states that regard shall be paid to *all* circumstances, and, further, that the court shall take into

consideration the means of *all* the parties. In short, the court may look at the means of the successful party to the proceedings, if the successful party chooses to put his means in issue by filing an affidavit under para. 15 (6) of the General Regulations. If he does this the assisted person must supply him with a copy of his civil aid certificate and thereby make known the National Assistance Board's determination as to his disposable income, disposable capital and maximum contribution to the legal aid fund. It is important to note that the affidavit must be filed *before* the hearing, and in this respect it would be expedient, therefore, for the opposite party in an assisted person case to consider carefully, before the date of the trial, whether or not he is going to take advantage of the provisions of para. 15 (6) of the General Regulations, for unless an affidavit is filed by him as provided by that paragraph then the court will be entitled to assume that his means are sufficient to ensure that no hardship will be entailed if he does not receive the whole amount of the costs to which he might otherwise be entitled on a party and party basis.

Finally, it will be observed that provision is made by proviso (ii) to para. 17 (1) (*d*) of the General Regulations for any person in whose favour the order for costs is made to apply to the court within six years after the date of the order for a variation thereof on the ground that the circumstances of the assisted person have changed since the making of the order. Notice in particular that it is only a change in the assisted person's circumstances which will warrant an application for a variation of the order, and no such application may be made in respect of a change in the circumstances of the person in whose favour the order is made. This limitation may cause a certain amount of hardship in some cases.

It will, of course, be appreciated that the assisted person's solicitor is not affected by the inquiry into the amount which his client is to pay, for whatever the outcome of the inquiry, he will receive out of the legal aid fund 85 per cent. of the amount of his profit costs and all his disbursements, except counsel's fees; and the means, or lack of means, of the assisted person will not affect this, nor will any order which may be made as to postponement of payment of the other side's costs.

J. L. R. R.

A Conveyancer's Diary

CONTENTS OF MEMORANDUM OF CONTRACT FOR THE SALE OF LAND

THE elements of the only problem of general interest in *Basma* v. *Weekes* [1950] A.C. 441 were simple enough. A agrees with X to purchase X's house, and the written memorandum of their agreement describes the parties thereto as A and X. In fact, A purchased not on his own account, but as the agent of P. Is it relevant to inquire whether X, when he entered into this agreement, knew that A was acting as agent for P? And if so, and if it is proved that X did know that A was acting merely as an agent, does the fact that the memorandum fails to identify the principal, P, render it insufficient to satisfy s. 40 of the Law of Property Act, 1925?

There has been some uncertainty in recent years on this question, arising from the decision of Luxmoore, L.J., sitting as an additional judge of the Chancery Division, in *Smith-Bird* v. *Blower* [1939] 2 All E.R. 406. In that case the plaintiffs authorised one Brown to buy two houses which the defendants wished to sell, and the memorandum of the agreement between the parties showed Brown as the purchaser, and contained nothing to indicate that he was not acting on his own account. An oral agreement to purchase was proved, and on the question whether there was a sufficient memorandum of that agreement to satisfy the statute, Luxmoore, L.J., held it to be necessary to determine whether the defendant was aware that Brown was acting only as an agent, and not as a principal. In his view the principle applicable to a case where an agent acts for an undisclosed principal in a contract in respect of which the statute requires evidence in writing was this: if the other party knew that the agent was only an agent, the memorandum, to comply with the requirements of the statute, had either to name the agent's principal or to identify him in some other manner; but if the other party did not know that the agent was an agent, and not a principal, the memorandum was sufficient if it merely showed the name of the agent and contained no reference to his principal.

This decision has always been suspect, for this reason. The Statute of Frauds, and its successor so far as agreements for the sale of land are concerned, s. 40 of the Law of Property Act, 1925, are concerned merely with evidence, and as a necessary corollary any question relating to the sufficiency of a memorandum for the purposes of the statute must be a question of law. But if for this purpose it should be necessary to inquire into the state of mind of either of the parties at the time of the formation of the contract, there is a question of fact to be determined, and the mere suggestion that such a question is a relevant question in deciding a matter of evidence involves, at the very least, the suspicion of confusion between two separate, although inter-related, problems, the formation of a contract and its proof by evidence of the prescribed quality. It is, therefore, not surprising that the decision in *Smith-Bird's* case should have been disapproved at the first opportunity that another court has had of examining it.

In *Basma* v. *Weekes*, *supra*, there was a memorandum of a contract for the sale of land which *prima facie* appeared to satisfy the statute. It was proved, however, that the party named as the purchaser was the agent of the plaintiff, although there was nothing in the memorandum to show that he had acted for anyone but himself. The vendors objected that as the memorandum did not contain the name of, or otherwise indicate, the principal as the purchaser, it did not satisfy the statute; and in support of this objection they relied on the decision in *Smith-Bird's* case.

Now this decision purported to rest on certain authorities, but, as appears from *Basma* v. *Weekes*, certain earlier cases, which clearly show the principle to be applied to this problem, were not cited to Luxmoore, L.J., the most important of these earlier cases being the decision of the Court of Exchequer in *Higgins* v. *Senior* (1841), 8 M. & W. 834. In that case the defendant sought to avoid liability on a contract. A memorandum had been made of the contract in which the defendant's name appeared as that of one of the contracting parties, and the defendant objected that this memorandum was insufficient to satisfy the statute because, to the knowledge of the plaintiff, the defendant had contracted as agent for another. This defence was not accepted, and the following propositions can be drawn from the judgment of Parke, B., who delivered the judgment of the court.

(i) When an agreement is entered into by an agent for an undisclosed principal, it is always open to the agent to show

that he contracted merely as agent, so as to give to the principal the benefit, and place the principal under the liability, of the contract.

(ii) This is so whether or not the contract is one that is required by the statute to be evidenced in writing.

(iii) Evidence which shows that an agent has contracted for a principal is equally admissible in the case where a contract requires to be evidenced in writing (because that evidence does not contradict the writing) as in the case where no writing is required to evidence the contract, for such evidence does not deny that the agent is bound by the contract (for he continues to be bound), but merely shows that another, the hitherto undisclosed principal, is also bound by the contract, the principal being bound by the act of his agent in entering into the contract.

(iv) But evidence tending to show that the agent who, according to the memorandum, is ostensibly bound by the contract is not so bound because he contracted as agent is not admissible, since to admit such evidence would be to allow parol evidence to contradict the written agreement which the statute requires.

The rule applicable to the present case, and the underlying explanation of it, were stated very shortly in the judgment delivered by Lord Reid in the following words: "An agent who contracts in his own name does not cease to be contractually bound because it is proved that the other party knew when the contract was made that he was acting as agent. So the agreement which is made in his name does not cease in that event to contain the names of the contracting parties, and therefore does not cease to satisfy the statute." And although the judgments of the Judicial Committee of the Privy Council are not, technically, binding on the courts in this country, a decision of that tribunal on a point which can arise under English law is always in practice followed, and the decision in *Smith-Bird's* case may therefore, for all practical purposes, be regarded as overruled.

Another point on s. 40 of the Law of Property Act, 1925, of some importance at the present time was decided in *Fowler* v. *Bratt* [1950] 2 K.B. 96. This was a case in which an estate agent claimed commission from his principal, the vendor of a house, on the ground that he had found a purchaser for his principal, and this claim necessarily involved the question whether the purchaser had entered into a binding contract of purchase with the vendor. The county court judge found that an oral contract had been entered into, and he also held that certain correspondence between the parties could be connected together to form a memorandum of the contract sufficient to satisfy s. 40. During this correspondence the parties had discussed the date on which possession should be given, but no firm agreement had been reached on this question. The county court judge found that the date when possession should be given had not formed a vital term of the contract, and was thus able to hold, as a matter of law, that the fact that the memorandum of the contract, as spelled out of the correspondence, contained no reference to possession did not render the memorandum insufficient as omitting one of the vital terms of the contract. The Court of Appeal upheld this decision.

A term as to the date on which possession is to be given to the purchaser may, of course, be a vital term as between the parties (the question whether it is so or not being a question of fact to be decided according to the circumstances of each case), and if it is found to be a vital term then its exclusion from a memorandum of the contract will vitiate the memorandum (*Hawkins* v. *Price* [1947] Ch. 645). In present conditions it would be usual to find that this matter had been made a vital term of the contract, but *Fowler* v. *Bratt*, *supra*, is a useful reminder that this is not necessarily so in every case.

"A B C"

Landlord and Tenant Notebook

ALIENATION BY PROTECTED TENANT

THE interpretation of para. (*d*) of Sched. I to the Rent, etc., Restrictions (Amendment) Act, 1933, authorising courts to make orders for possession (where reasonable) if "the tenant without the consent of the landlord has at any time after the 31st July, 1923 [new control: 1st September, 1939] assigned or sub-let the whole of the dwelling-house or sub-let part of the dwelling-house, the remainder being already sub-let" has long puzzled practitioners and writers, the bewilderment being largely due to the fact that a *statutory* tenancy has been held to be inherently incapable of assignment (*Roe* v. *Russell* [1928] 2 K.B. 117 (C.A.)), coupled with the fact that, as regards sub-letting at all events, s. 15 (3) of the Increase of Rent, etc., Restrictions Act, 1920, contains express provision for converting contractual sub-tenants into statutory direct tenants. One book on the subject declares: "the paragraph applies even if there is no restriction on assignment in the lease . . . is subject to the overriding requirement of reasonableness . . ." and opines: "it is thought, contemplates only voluntary assignment *inter vivos*." Another agrees that it "applies whether there is a covenant against assigning or under-letting or not" and ventures the opinion "it is thought that an order for recovery of possession would be made . . . only against the tenant, not against the assignee or sub-tenant, the object being, it seems, to take away the protection of the Acts from a tenant who has ceased altogether to occupy." A third writer also emphasises that the reasonableness requirement has still to be satisfied and says that the only effect of a covenant against assigning or sub-letting is that during the currency of a contractual tenancy breach may occasion forfeiture (i.e., provided that there is a proviso for re-entry on such breach), and also observes: "An order for possession made under this provision against a tenant will not necessarily avail against a sub-tenant, who may be entitled to rely upon the protection of certain other provisions of the Acts," giving a cross-reference to that part of his book which deals with s. 5 (5) (order for possession not to affect sub-tenant to whom premises lawfully sub-let) and s. 15 (3) (*supra*) of the 1920 Act. Yet another recalls that the provision was originally inserted when there was some authority for the view that a statutory tenancy could be assigned (i.e., before *Roe* v. *Russell*, *supra*) but "as it was repeated after it had been settled that no such assignment could be made, it is now apparently operative only in the case of an assignment by a contractual tenant, or a sub-letting by any tenant, whether contractual or statutory" and the learned author cites county court decisions in which orders have been made on the ground of assignment of a contractual term and also examines with great care the requirements of consent and possible effect of acquiescence.

Many of the above statements and opinions have now been authoritatively confirmed or modified or disposed of by *Regional Properties, Ltd.* v. *Frankenschwerth and Another* [1951] 1 All E.R. 178 (C.A.). The first defendant in that

case had held a tenancy of a protected flat, containing no restrictions on alienation, and determinable by one month's notice. He first sub-let it furnished to the second defendant, but when the plaintiffs, his landlords, gave him notice to quit he assigned the term to the second defendant. In proceedings for possession (and for damages against the first defendant for failure to deliver up) the county court made an order against both. On appeal, it was first argued that "the tenant" in the phrase "the tenant without the consent of the landlord has . . . assigned, etc." was limited to holders of statutory tenancies. The court could find no support for this view, Evershed, M.R., going as far as to say that, cases having established that such tenancies could not be assigned at all, it was impossible to suppose that Parliament—which according to well-established principles must be taken to legislate in the light of judicial decisions on existing Acts—should have repeated the words of the 1923 Act ten years later if such an assignment was not recognised. This accords with the view expressed in the last text-book cited, but one may reflect that well-established principles have a way of breaking down when one seeks to apply them to the Rent Acts; but even if the paragraph were read as meant to be applicable to statutory tenancies, it would not follow that it could not affect contractual ones; some paragraphs in the Schedule certainly operate in either case.

Still, it was difficult to see how the paragraph could fail to apply to the facts before the court, and the alternative argument was then considered. By this, the court was invited to read it as applicable to cases in which the terms of the tenancy prohibited assignment without consent. "Counsel for the sub-tenant submitted that that must be so because otherwise the results would be so surprising" said Evershed, M.R., proceeding with "I confess that they have not surprised me," and again referring to the words as "perfectly simple and straightforward." One might add that breach of a term of the tenancy is already covered by para. (*a*); not, of course, that the Rent Acts are necessarily free from redundancy. Then the suggestion was made that, as the particular tenancy agreement provided that "tenant" should include "assignee," and a clause in the draft which had prohibited assignment had been struck out, the landlords had impliedly given their consent. This did not appeal to the court either, it being held that the paragraph "meant what it said," and that the consent of the landlord was the consent actively given to a particular tenant.

Two academic questions suggest themselves. One is, will this decision have any effect on the line of authorities defining, or tending to define, the circumstances in which, for the purposes of ss. 5 (5) and 15 (3) of the 1920 Act, a dwelling-house or part of such is to be considered *lawfully* sub-let? So far, unlawfulness has always consisted in the breach of an express covenant against sub-letting; must we now take it that para. (*d*) of Sched. I to the 1933 Act makes it unlawful for a protected tenant to sub-let the whole of the premises? The answer is, I think, no; there is nothing unlawful about such a proceeding, but the sub-tenant has no protection if he is still there when the mesne term ends.

Akin to this question is one which could be put in this way: could the two defendants in *Regional Properties, Ltd.* v. *Frankenschwerth* have achieved their common object in any other way? The paragraph authorises the court to make an order for possession when the tenant without the consent of the landlord has assigned the whole of the dwelling-house or sub-let *part* of the dwelling-house, the remainder being already sub-let. The draftsmen appear to have been conscious of *Chatterton* v. *Terrell* [1923] A.C. 578, which decided that, while a covenant not to sub-let which did not specify "or any part, etc." was not infringed by a sub-letting of part, it was broken by piecemeal sub-letting of the whole. But suppose that, either after or before the service of the plaintiffs' notice to quit, the first defendant in *Regional Properties, Ltd.* v. *Frankenschwerth* had granted the second defendant a periodic (sub) tenancy of most of the flat, unfurnished, the portion not demised being unlettable and useless to the plaintiffs?

Milmo v. *Carreras* [1946] K.B. 306 is a recent authority on the result of granting a sublease to expire after the mesne lease, which was for a fixed period. The case was a claim for possession by the grantor of such against his grantee and it was held that, whatever else might be correct (Lord Greene, M.R., mentioned ten pages of discussion in Platt), the grantor had, since he made the grant, been a stranger to the land, that he had no reversion, and that if he had not then actually assigned the residue of his term he had agreed to do so. In that case, presumably, the plaintiff's landlord, if not *tertius gaudens*, was indifferent; but since an assignment can be of part of demised premises, it might be held that the effect of the transaction visualised was that the second defendant in the recent case had become assignee of part, and I suggest that if the plaintiffs had to contend that this brought him within para. (*d*) they would have a hard task. Whereas, if the sub-letting were by a holder of a periodic tenancy not under notice to quit, there is ample authority to show that it would be valid as an underletting (*Pike* v. *Eyre* (1829), 9 B. & C. 909; *Plummer* v. *David* [1920] 1 K.B. 326) while it lasts—and that, in view of ss. 5 (5) and 15 (3) of the 1920 Act, would be good enough for the sub-tenant.

R. B.

HERE AND THERE

ORACULAR TONGUES

SINCE the intolerable burden of planning our own lives was so kindly lifted from our nerveless hands by persons with more nerve than we, the sacerdotal language of the new ineffable mysteries has so woven itself into the pattern of our daily lives that it is with a sort of nostalgic sadness that we occasionally hear, like the echo of a nursery jingle, one of the snatches of medical or legal jargon that used to seem so incongruous in the context of everyday life. The technicians who employed those strange tongues hovered on the fringes of our lives where unpredictable emergencies were encountered by the less fortunate; they were the soldiers guarding the frontiers of our existence. Only since Planning became the state religion did the feckless, incompetent citizen, convinced of his sinful nature, realise that his whole life is one long emergency down to its minutest detail and that on oracular utterances half understood or, more probably, not understood at all, may depend the continuance of the boon of his own freehold roof over his head or the arrival or non-arrival (through his letter-box) of his hebdomadal carcase meat nutritional intake.

NEW JARGON FOR OLD

THESE reflective comparisons were started in my mind by a little medico-legal interlude in court at Birmingham which recalled some of the fragrance of those more light-hearted days before long words and incomprehensible phraseology had definitely become no laughing matter. It was in the good old constabulary tradition of expansive magniloquence, for a police officer complaining to the magistrate of an assault explained that in consequence he was suffering from circum-orbital haematoma. Don't bother to reach for your medical

dictionary, but pray make a note of it for the embellishment of your next statement of claim. In that form it ought to be worth several pounds more in damages to your client than a common, prosaic black eye. They are worth pressing between the leaves of your Bullen and Leake, these colourful little blossoms, culled from the herb garden of medical science. Take "contusions of both infra-orbital regions"—that one has figured in the King's Bench Division. It has reference to the cheek bones. Rather more exotic and suggestive perhaps of an Aztec deity was "cheiropompholyx," which turned up once in a case in Bow County Court—but east of Aldgate you may meet with every tongue. That particular polysyllable describes, it seems, a rather special sort of blister on the hand. I have never taken unkindly to that sort of technicality. It has a precise and fixed meaning and the doctor can tell you just what it is in the simplest terms. But the language that Whitehall has been perfecting for the last quarter of a century or so is just about as capable of translation into the language of Milton or Thackeray as the loftier flights of the higher mathematics. Take something (administratively) nice and simple—nuts. "In the Nuts (Underground) (Other than Groundnuts) Order the expression nuts shall have reference to such nuts other than groundnuts as would but for this amending order not qualify as nuts (underground) (other than groundnuts) by reason of their not being nuts (underground)." We must be free or die who speak the tongue that Shakespeare spoke. Do we?

SAVING HIS SKIN

HAS a man the right to do what he likes with his own skin? The question was raised in an extract from the *Evening Standard* forty years ago, recently reprinted in its columns. The year was 1911. Lorraine, annexed by Germany another forty years back, had not yet accepted its separation from France. The heading was "Seditious Tattooing." Here is the item: "One of the persons arrested in connection with the recent Lorraine manifestation is a man whom the police have found to be tattooed with the cross flags and 'Vive la France' together with a German helmet, alongside of which is a very disrespectful word attributed to Cambronne at Waterloo. Sneider pleads he has a right to do what he likes with his own skin but the authorities take a serious view of the matter and he is to be prosecuted for sedition." One would like to know the result of the proceedings. If he had been content to plead not guilty, to point out that there was no evidence that he had ever displayed to anyone the offending inscription, no evidence, indeed, that the operation had not been performed without his knowledge and under an anæsthetic, what would have been his position in law? It was that fatal claim to do what he liked with his own skin that no enlightened Government could tolerate. You remember *R.* v. *Haddock*, reported in Herbert's Misleading Cases, how the man who jumped off Hammersmith Bridge during the regatta made his own conviction inevitable by pleading that this was a free country and he could do what he liked if he did nobody any harm. Talking of tattooing, a few years ago there was (perhaps there still is) in the United States, a man called "the Human Autograph" who was once brought before a magistrate who asked him why he was making such a noise, to which he replied: "I have 1,265 names tattooed on my chest." I believe the magistrate asked whether there was room for his.

RICHARD ROE.

POINTS IN PRACTICE

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Purchase of Completed House—REMEDIES FOR DEFECTS

Q. A purchased a property which had been rebuilt after the original premises had been destroyed by enemy action. He was not the original purchaser but bought from a person who purchased after the rebuilding. It is understood that the building was erected by the builder to contract under the supervision of a surveyor. Some months after A purchased the premises he discovered excessive dampness in the hall. Ultimately the cause of the dampness has been traced to a defective soakaway. It appears that a drain leads somewhere outside the dwelling-house where a soakaway should have been constructed, but in fact there is no soakaway at this particular point at all and the water has been forced back up the pipes into the premises. It appears to us that A has no remedy in respect of the defective condition of the premises unless he is able to stand in the position of the original purchaser from the builder, who presumably would have rights against the builder, as the premises were built under building contract and it was not a speculatively built house. Would the covenants on the part of A's vendor as to title extend to confer any remedy on A or has he otherwise any rights against the builder or surveyor in the matter?

A. In the case of an agreement to sell a plot of land and to build a house thereon or an agreement for the sale of a house in the course of erection there is an implied warranty that the house shall be reasonably fit for habitation (*Miller* v. *Cannon Hill Estates, Ltd.* [1931] 2 K.B. 113; *Perry* v. *Sharon Development Co., Ltd.* [1937] 4 All E.R. 390). There is, however, no such implied warranty on the sale of a completed house even if erected immediately before the contract (*Hoskins* v. *Woodham* [1938] 1 All E.R. 692). The purchaser in the present case can, therefore, only rely upon latent defects, and although it might be possible to show that the defect in the drainage system was not discoverable, the words of Williams on Vendor and Purchaser, 4th ed., vol. II, p. 758, that a vendor "may well sell a house which has got dry rot in all the woodwork, and is badly drained, to a purchaser who knows nothing of these defects" are strongly against the purchaser. We are unable to see that the purchaser can acquire the benefit of the original contract with the builder or surveyor unless such benefit was expressly assigned to him. The words of the usual covenants for title do not appear apt to cover the position and we know of no case where they have been extended to similar circumstances. Normally a vendor requires a purchaser to buy a property "as it stands"; see, for example, the provisions directed to this purpose in The Law Society's Conditions of Sale, No. 17 (5), and the National Conditions of Sale, 15th ed., No. 12 (3).

Exchange of Premises

Q. We act for a client, Mr. Y, who is disposing of his freehold house to Mrs. L. The consideration is that Mrs. L will transfer her grocery business which she has carried on at a certain address for the last ten years to Mr. Y, together with the sum of £500 in cash. Mrs. L's premises are owned by the Railway Executive, which has agreed to transfer her existing tenancy to Mr. Y. Would you please refer us to an appropriate precedent advising us what form of conveyance will generally have to be taken?

A. The exchange of a business and premises held on a short tenancy for a freehold house is a transaction not readily amenable to the standard precedents of deeds of exchange. Nevertheless, we see no reason why it should not be done, and it will afford a considerable saving of stamp duty which will only be chargeable on the equality money of £500. However short Mrs. L's tenancy may be (even if weekly), we consider that it should be assigned to Mr. Y subject to the usual licence obtained from the Railway Executive as landlords. Any precedent of a deed of exchange (such as that on p. 310 of Prideaux, Precedents in Conveyancing, 24th ed., Vol. I) may be used. Mr. Y will convey his house to Mrs. L in consideration of the payment by her to him of the sum of £500 by way of equality of exchange and the assignment of the tenancy and the goodwill, together with the covenants on the part of Mrs. L thereinafter contained. These covenants will be the usual covenants in restraint of trade. Stock, fixtures and fittings can either be assigned by the deed or pass by delivery. The deed will be executed in duplicate, since it will form part of the titles of both Mrs. L and Mr. Y.

REVIEWS

Family Inheritance. By LAURENCE TILLARD. Second Edition by P. R. OLIVER, B.A., of Lincoln's Inn, Barrister-at-Law. 1950. London: The Thames Bank Publishing Company, Ltd. 7s. 6d. net.

The appearance of the first edition of this book was contemporaneous with the passage into law of the Inheritance (Family Provision) Act, 1938, which it sought to explain to English readers by examples drawn from other countries—notably New Zealand—where similar legislation had been in operation for some time; and a very useful guide it proved to what was then a completely new branch of the English law of property. This edition is, of course, very different from the first. The effect of the Act is now illustrated and explained principally by reference to the score or so reported decisions of the English courts on the Act, although the notes on dominion cases (notably the New Zealand cases) have been allowed to remain, and both the introductory note and the annotations to the Act are as up to date as any text-book on a constantly expanding body of law such as family provision can be.

The scheme of the book is to print the Act with annotations following each subsection, and there are appendices containing the text of the New Zealand Acts on family protection (the nomenclature adopted there), and full notes of all the most important decisions on the Act of 1938. A few small points might be noted by the editor for a future edition. The notes to the Act would be more useful if they were split up into more paragraphs: at present a single paragraph sometimes includes notes on a jumble of different topics. The reference on p. 5 to *Re Brownbridge* (1942), 193 L.T. News. 185, with its suggestion that the test for the application of the jurisdiction under the Act is whether the testator has behaved unreasonably or not *vis-à-vis* the applicant, should be omitted or modified: as is pointed out later (on p. 17), this is no longer the proper test to apply if (as is generally considered) *Re Franks* [1948] Ch. 62 was rightly decided. And the bare reference to *Re Wainwright* (1947), 91 SOL. J. 148, at p. 18, could usefully direct the reader to the full notes on that case, appended to another subsection of the Act, on the following page. But these small complaints apart, the practitioner will find this a useful and reliable guide to a difficult jurisdiction.

Stephen's Commentaries on the Laws of England. Twenty-first Edition in Four Volumes with Supplement. Editor-in-Chief: L. CRISPIN WARMINGTON, Solicitor of the Supreme Court (Hons.). 1950. London: Butterworth and Co. (Publishers), Ltd. £6 15s. net.

It is good news that "Stephen" is coming into its own again as the set book for the Solicitors' Intermediate Examination. The benefit to the student of having to work from only one set of volumes as his main text, produced under one general editorship and deriving from one original author, is no doubt coupled with an advantage to teachers and examiners in finding a ready made syllabus by which to direct their labours and their inquisitions. Not that the excellent text-books which have served during the interregnum between the nineteenth and twenty-first editions of "Stephen" are to be decried. But now once more the student will undoubtedly gain in sense of proportion and lack of duplication from the fact that his whole field of legal study is covered in a uniform style by a compact arrangement of topics. The narrative idiom which has been a feature of "Stephen" since it became a student's book, and which is admirably followed by those responsible for the present edition, is also conducive to an atmosphere of leisure and dignity in his reading such as an articled clerk must cultivate in spite of the fact that he will be working against time, if he is not to be caught up in a mere cram. Then such out-of-the-way topics as building societies, the law of persons, the structure of the legal profession and the theory of the death duties are apt to fall outside the boundaries of the conventional divisions of the law on which most teaching books are based. Here they will be found treated by experts and set in their proper places in the general scheme.

The scheme is outlined at the commencement of the first volume in a publisher's note which seems from its general tenor to be addressed chiefly to teachers. For our part we should have liked to see this replaced by an editorial foreword establishing at the outset the friendly contact with the student-reader which is so necessary to successful teaching. It seems, no doubt, irrational that the mere signature to a preface can be important: perhaps we are old-fashioned in preferring any apologia for a literary work to be offered by the editor or author.

From the spines of the volumes, it appears that the order of treatment is vol. I—Sources and History; Law of Property: vol. II—Contract; Tort; Law of Persons: vol. III—Civil Procedure; Constitutional Law: vol. IV—Criminal Law. The last-named subject is not, however, given the disproportionate allocation of space which this bare recital might suggest, for 166 pages of vol. IV are given to an index and table of cases for the whole work. (There is no table of statutes.) A combined index in one of the volumes has all the attributes of a mixed blessing. The student cannot easily refer back and forth without keeping vol. IV by him; on the other hand his perspective is improved if the index entry indicates the impact of a topic on more than one subject (e.g., the entry "Infant") or the various applications of a term of art (e.g., "Licence").

The more recondite of the current academic wrangles find no place in the work, and rightly so. But it is satisfactory to find references to new trends of thought on such subjects as "proximity" in the law of negligence (vol. II, p. 378), and of course an adequate treatment of the many important decisions of principle reported since the last edition. Some readjustment in the space allotted to particular topics is noticeable in a comparison between the ninteenth and twenty-first editions. For example, "Bills of Exchange" in the chapter on Negotiable Instruments in vol. II runs to only twelve pages as against seventeen. On the other hand, several special kinds of contract are allotted separate new chapters. These redistributions of the all-too-little space available are matters of individual taste, but as a broad rule it seems to be right to cover as much ground as possible in a general way at the Intermediate stage. The detailed rules about bills are among the headaches coming to the student in the Final.

It is good, too, to see the student warned against certain facile assumptions which enjoy an astonishingly wide "underground" circulation, e.g., that every contract is necessarily formed by offer and acceptance; or that the common law and equity have become indistinguishable in the process of consolidation of tribunals. Nor is the reader left to chance in the matter of the acquisition of practical hints on the mere machinery of professional routine, as witness some wise advice on the completion of drafts (vol. I, p. 586).

The whole work is excellently phrased having regard to the needs of the reader who will make most use of it. We treat the statement on p. 138 of vol. I about the legal estate in settled land being vested in the trustee as a slip. But we rather boggle at the description of one of the functions of the sheriff's court (vol. III, p. 185) as "to ascertain the value of an *unsuccessful litigant's* lands." Surely "judgment debtor" is what is meant.

Mr. F. W. Bull, solicitor, of Newport Pagnell, left £21,545 (£21,428 net).

Mr. W. T. Mellows, solicitor, of Peterborough, left £65,394 (£47,923 net).

NOTES OF CASES

COURT OF APPEAL

INCOME TAX: SALARY "WITHOUT DEDUCTIONS"

Jaworski *v.* Institution of Polish Engineers in Great Britain, Ltd.

Somervell, Jenkins and Birkett, L.JJ. 27th November, 1950

Appeal from Finnemore, J. (94 SOL. J. 385).

The plaintiff, a Polish subject, in 1943 entered the employment of the defendant association. At that time Polish subjects in this country were not liable to U.K. income tax. The plaintiff's agreement with the defendants contained a term that his remuneration should be paid to him "without any deductions and taxes, which will be borne by the association." In May, 1946, he became subject to U.K. income tax and, in accordance with the existing income tax rules, the defendants deducted from his monthly salary the amount of tax due to the Inland Revenue. He brought this action to recover the amount so deducted on the ground that he was entitled to receive his salary free of tax. By r. 23 of the All Schedules Rules, Income Tax Act, 1918: "... (2) Every agreement for payment of interest, rent or other annual payment in full without allowing any such deduction [as authorised by the Act] shall be void." Finnemore, J., dismissed the action, and the plaintiff now appealed.

(*Cur. adv. vult.*)

SOMERVELL, L.J., reading the judgment of the court, referred to *Blount* v. *Blount* [1916] 1 K.B. 230, at p. 234; *North British Railway Co.* v. *Scott* [1923] A.C. 37; and *Booth* v. *Booth* [1922] 1 K.B. 66, and said that it had been clearly established that if appropriate words were used a payer could so provide that a payee received year by year a fixed sum. The payer covenanted to pay a sum which after deduction of tax left the sum which it was desired should be available to the payee. That was now familiar law, but the words used must point to a gross sum (see *South American Stores (Gath & Chaves), Ltd.* v. *I.R.C.* (1926), 12 Tax Cas. 905, and *Blount* v. *Blount, supra*). In *Whiteside* v. *Whiteside* [1950] Ch. 65; 93 SOL. J. 250, the Master of the Rolls had stated as beyond doubt that a promise to pay a sum of money free of income tax contravened income-tax law; but it was clear that he had not in mind contracts of service. The plaintiff's remuneration was to amount to a fixed sum of £20, "without any deductions and taxes, which will be borne by the association." Was the word "without" to be understood as meaning "before tax, etc.," or was it to be read as providing for "£20 and taxes"? The words which in the court's opinion pointed to a gross sum were: "which will be borne by the association." Finnemore, J., had said that the agreement could not be construed as an agreement for a gross sum unless that were stated in quite plain terms. The court were not sure that they would need plainer words for one construction rather than the other. The parties clearly intended the plaintiff to get more than £20, subject by deduction or otherwise to the full tax. In their opinion the agreement, which had not been drafted by lawyers, meant: "my remuneration is to be £20 plus whatever sum is necessary to leave that available to me after you have borne the taxes." As under the law the tax was suffered by deduction, it meant such a sum as after deduction would leave £20. It was unnecessary to decide whether r. 23 (2) of the All Schedules Rules applied to salaries or remuneration for employment under Sched. E. Appeal allowed.

APPEARANCES: *Maurice Berkeley* (*H. H. Wells & Sons*); *Sir Roland Burrows*, K.C., and *N. F. Stogdon* (*Gaunt, Foster and Hill*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

RENT RESTRICTION ACTS: OPERATION *IN REM*

Percy G. Moore, Ltd. *v.* Stretch

Somervell, Jenkins and Birkett, L.JJ. 7th December, 1950

Appeal from Liverpool County Court.

The plaintiff company were the tenants of Liverpool Corporation of a dwelling-house and shop, being premises in respect of which the corporation had to keep a housing revenue account under s. 128 of the Housing Act, 1936. By s. 3 (2) (*c*) of the Rent, etc., Act, 1939, the Rent Restriction Acts are not to apply to a house or part of a house in respect of which a local authority are so required to keep a housing revenue account. The tenants had sub-let the house to the defendant at a weekly rent of £1. The sub-tenancy had been determined by a notice to quit, which had expired. The tenants claimed possession, and the sub-tenant claimed the protection of the Rent Restriction Acts. The county court judge held that the Acts operated *in rem* and not *in personam*, and that consequently the house was excluded from the operation of the Acts *vis-à-vis* the tenant by s. 3 of the Act of 1939. The sub-tenant appealed.

SOMERVELL, L.J., referred to *Clark* v. *Downes* (1931), 145 L.T. 20, *Wirral Estates, Ltd* v. *Shaw* [1932] 2 K.B. 247, and *Rudler* v. *Franks* [1947] 1 K.B. 530, and said that the county court judge had rightly regarded himself as bound by the last-mentioned case to make an order for possession.

JENKINS, L.J., agreeing, said that whether the full result of s. 3 (2) (*c*) in the terms in which it appeared in the Act of 1939 was foreseen or not when it was drafted, he found its words an insurmountable obstacle to the sub-tenant's contention that the subsection was intended for the protection of a local authority but was not available for a lessee from the local authority against a sub-tenant. Section 3 (2) (*c*) contained nothing to confine its application to lettings or claims for possession by local authorities. Once the fact was established that the local authority were required to keep a housing revenue account in respect of the house, it followed that the house was outside the Rent Restriction Acts. It did not matter whether the tenancy in respect of which protection was claimed was a tenancy held directly from the local authority or one granted by a lessee of the local authority.

BIRKETT, L.J., agreed. Appeal dismissed.

APPEARANCES: *F. D. Patterson* (*Mawby, Barrie & Letts*, for *Silverman & Livermore*, Liverpool); *H. Heathcote-Williams*, K.C., and *G. Newman* (*Edward Lloyd & Co.*, Liverpool).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

RENT RESTRICTION: COUSINS AS MEMBERS OF TENANT'S "FAMILY"

Langdon *v.* Horton and Another

Eversheld, M.R., Singleton, L.J., and Danckwerts, J.

7th December, 1950

Appeal from Hastings County Court.

When the statutory tenant of a house within the Rent Restriction Acts died two other women, her cousins, the defendants, were living in it with her. They had been living with her for twenty-nine years, and at the time of her death all three were about eighty years old. The landlord claimed possession, but the defendants contended that they were entitled to remain in possession under s. 12 (1) (*g*) of the Rent, etc., Act, 1920, as being members of the tenant's family residing with her at the time of her death.

EVERSHED, M.R., said that the word "family" in the subsection was used in a common or popular sense. Would an ordinary person in the course of ordinary conversation describe cousins as members of the deceased's family? It was not enough that all three women were members of the same family in that they had common grandparents; the word "family" had not the same meaning as "relation." The test of consanguinity was not conclusive. There were the cases, such as *Jones* v. *Whitehill* [1950] 2 K.B. 204; 94 SOL. J. 113, where, apart from consanguinity, there were special circumstances requiring the person claiming to be a tenant under s. 12 (1) (*g*) to be so considered. The county court judge was right in holding that the defendants were not members of the deceased's family for the purposes of the Acts. The appeal would be dismissed.

SINGLETON, L.J., and DANCKWERTS, J., agreed. Appeal dismissed.

APPEARANCES: *Neil Lawson* (*Field, Roscoe & Co.*, for *Herington, Willings & Penry-Davy*, Hastings); *L. A. Blundell* (*Thomas Eggar & Son*, for *Young, Coles & Langdon*, Hastings).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

CHANCERY DIVISION

GAS UNDERTAKING: NATIONALISATION: WORKING PROFIT: ADJUSTMENT BETWEEN LOCAL AUTHORITY AND AREA BOARD

Hinckley Urban District Council v. West Midlands Gas Board

Lloyd-Jacob, J. 13th December, 1950

Action.

The plaintiffs promoted a gas undertaking under the Hinckley Local Board Gas Act, 1880 (as amended), a local Act, which

contained detailed provisions for the disposal of any surplus profit; it authorised, *inter alia*, the plaintiffs to transfer such profit to the general rate fund or to apply it in reduction of the price charged for gas. The gas undertaking vested in the defendants on 1st May, 1949, by virtue of the Gas Act, 1948. On the vesting date a considerable—then unspecified—working profit had accumulated which was later ascertained as amounting to some £30,000. That credit balance vested in the defendants, and the court was asked to determine whether it vested in them subject to any obligation to dispose of it in accordance with the local Act, and if so, whether such obligation required the remission of the balance to the plaintiffs who indicated that they wanted to transfer it to the general rate fund.

LLOYD-JACOB, J., in a considered judgment, said that the obligation to dispose of the credit balance in a particular way could only arise from the Gas Act, 1948, s. 19 or s. 56. The appropriation of surplus gas profits to the relief of rates constituted an arrangement for the making of financial adjustments within the meaning of s. 19 (1). If, therefore, such an appropriation had been determined on or before the vesting date but no actual adjustment was made, the section would apply and the assets would be charged with the obligation to implement the adjustment. As, however, no such appropriation had been made before the relevant date, that section did not avail the plaintiffs. As to s. 56 of the Gas Act, 1948, the financial provisions of the plaintiffs' local Act were inconsistent with the Act of 1948, so that unless they were saved as containing "special provisions for the protection of any person or class of persons," they would cease to have effect as from vesting date. That phrase was not apt to describe the regular, prescribed manner in which the funds of the plaintiffs' undertaking were to be administered, however much such administration might profit the ratepayers or gas users as a class; it should rather be read as intended to preserve the operation of a statutory provision which relieved a person or class from liability or default. It followed that, as from vesting date, the financial provisions of the plaintiffs' local Act ceased to have effect; and in the result, the credit balance vested in the defendants without being subject to any specific obligation as to its disposal.

APPEARANCES: *Arthur Capewell*, K.C., and *F. N. Keen* (*Lees and Co.*, for *J. G. S. Tompkins, Hinckley*); *Lionel Heald*, K.C., and *J. P. Ashworth* (*Sherwood & Co.*, for *A. C. Cromsdell*, Birmingham).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

KING'S BENCH DIVISION

DIVISIONAL COURT

RENT TRIBUNALS: NEGOTIATED RENTS

R. *v.* Paddington North and St. Marylebone Rent Tribunal; *ex parte* Holt

Lord Goddard, C.J., Hilbery and Devlin, JJ.

24th January, 1951

Application for an order of certiorari.

The applicant landlord sought to have quashed an order, dated 7th June, 1950, whereby the respondent rent tribunal reduced from £160 to £140 a year the rent of a first-floor flat in Maida Vale. The grounds for the application were that on 1st June, 1950, the rent tribunal adjourned the hearing of the tenant's reference of the tenancy to enable the landlord to call evidence as to previous letting of the flat which would affect the question of the tribunal's jurisdiction; but that, without any notification to her, the tribunal further heard the reference and determined it on 7th June.

LORD GODDARD, C.J., said that owing, it appeared, to a complete misunderstanding between the landlord and the tribunal at the hearing on 1st June, 1950, as to the steps to be taken with regard to the obtaining of the further evidence in question, the reference was determined in the landlord's absence. An order of certiorari would therefore be made. He would, however, make this observation. The lease in question was for seven years, and it was executed after protracted negotiations between parties who were professionally advised. In such circumstances the fair rent would be the rent which the parties had agreed should be paid. This was not the case of a small weekly tenant of the class which the statute was primarily designed to protect. Where educated people, professionally advised, had agreed among themselves that a rent of, say, £160 a year, should be paid, it could only be a matter of opinion or estimate whether that was a fair rent. Where, as in the present case, the result of the inquiry was merely to bring about a small reduction from £160 to £140 a year it was necessary to remember that there was no scientific yardstick by which the just rent could be arrived at in a matter of that kind. He (his lordship) hoped that, if the present matter should come before the tribunal again, they would bear prominently in mind the circumstances outlined above, in which the tenancy had come into being.

HUMPHREYS and DEVLIN, JJ., agreed.

APPEARANCES: The landlord in person; *J. P. Ashworth* (*Treasury Solicitor*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

DIVISIONAL COURT

DRINKING AFTER HOURS: POSITION OF LICENSEES

Ferguson *v.* Weaving

Lord Goddard, C.J., Hilbery and Devlin, JJ.

26th January, 1951.

Case stated by the Leeds stipendiary magistrate.

Ten persons were convicted of consuming intoxicating liquor at eighteen minutes after closing time in a public house, of which the defendant was the licensee, in contravention of the Licensing Act, 1921. The defendant was charged with counselling and procuring them in the commission of that offence. The premises in question were extensive. When the police entered they found the ten persons in the concert room, which contained some seventy persons, in the act of consuming, or in possession of glasses of, intoxicating liquor. The licensee from a central position in the premises had signalled the approach of closing time by switching lights on and off, and the waiters had called "Time." She had been on a tour of the premises and was about to enter the dance room when the police arrived. If the waiters had properly carried out their instructions, all glasses, whether empty or containing liquor, would have been collected throughout the premises by 10.10 p.m. One or more of the waiters in the concert room failed to carry out his or their instructions properly. The magistrate was of opinion that the defendant was present on the premises both actually and constructively through the presence of her servants; that she did everything that she could to see that the requirements of the law were complied with; that the question was whether, because her servants failed in their duty, she could be said to be actively or constructively assisting in the commission of the offences; and that, as he found as a fact that the defendant neither assisted nor connived in the failure of duty of a waiter or waitress, the information against her should be dismissed. The prosecutor appealed. (*Cur. adv. vult.*)

LORD GODDARD, C.J., reading the judgment of the court, said the first thing to observe was that, while s. 4 of the Licensing Act, 1921, prohibited a licensee from selling or supplying either by himself or his servants intoxicating liquor outside permitted hours, and also prohibited the consumption on licensed premises of any intoxicating liquor after those hours, it did not make it an offence in the licensee to suffer or permit the consumption of liquor after hours. While it might seem curious that Parliament had not made that an offence of a licensee, nothing would be gained by discussing whether the omission appeared to be deliberate or accidental. The fact remained that consuming liquor after hours was only a substantive offence in the consumer. At the same time, there could be no doubt that if a licensee consciously permitted consumption after hours it would amount to aiding and abetting the offence. But the court had now to consider whether, as the section did not create a substantive offence in the licensee, she could be convicted of aiding and abetting by imputing to her the knowledge of her servants. There could be no doubt that that court had more than once laid down in perfectly clear terms that before a person could be convicted of aiding and abetting the commission of an offence, he must at least know the essential matters which constituted the offence (see, for instance, *Johnson* v. *Youden* [1950] 1 K.B. 544; 94 SOL. J. 115). The principle which applied to the cases in which knowledge had been imputed to a licensee because of the knowledge of his manager or servant had been laid down, not for the first time, in *Linnett* v. *Metropolitan Police Commissioners* [1946] 1 K.B. 290; 90 SOL. J. 211, and it was stated that the principle underlying those decisions depended on the fact that the person responsible in law, as for example, a licensee under the Licensing Acts, had chosen to delegate his duties, powers, and authority to another. The court would assume for the purpose of the present case that the defendant

licensee had delegated to the waiters the conduct and management of the concert room: if the Act had made it an offence for a licensee knowingly to permit liquor to be consumed after hours, then the fact that she had delegated the management and control of the concert room to the waiters would have made their knowledge her knowledge. But there was no substantive offence in the licensee at all: the substantive offence was committed only by the customers. She could aid and abet the customers if she knew that the customers were committing the offence; but the court was not prepared to hold that knowledge could be imputed to her so as to make her not a principal offender but an aider and abettor. So to hold would be to establish a new principle in criminal law and one for which there was no authority. If Parliament had desired to make a licensee guilty of an offence by allowing persons to consume liquor after hours it would have been perfectly easy so to provide in the section.

The appeal failed. Appeal dismissed.

APPEARANCES: *P. Stanley-Price* (*Sharpe, Pritchard & Co.*, for *O. A. Radley*, Leeds); *George Pollock* (*Alf. Masser & Co.*, Leeds).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

PROBATE, DIVORCE AND ADMIRALTY DIVISION

MAINTENANCE: WIFE'S APPLICATION FOR INCREASE

T. *v.* T.

Barnard, J. 31st January, 1951

Application for maintenance under s. 23 of the Matrimonial Causes Act, 1950.

The parties were married in 1916, and there were no children. In June, 1932, they entered into a deed of separation, the husband covenanting to pay his wife £3 a week (net). Those payments had been continued regularly ever since. In December, 1949, the wife asked the husband to increase the amount of the payments, but he refused. His income had greatly increased since 1932. The wife made this application in view of the husband's refusal to increase the payments. His defence was that he relied by way of estoppel on the deed, his obligations under which he did not dispute.

BARNARD, J., said that, while the husband's financial position had materially improved, that of the wife, who was suffering from spinal arthritis, had deteriorated. *Diggins* v. *Diggins* [1927] P. 88; *Snowdon* v. *Snowdon, Dewe* v. *Dewe* [1928] P. 113; *Iles* v. *Iles* (1931), 145 L.T. 71; and *Matthews* v. *Matthews* [1932] P. 103 had been cited. In some of those cases, although there had been a deed, payments under it had ceased before the applications to the court. Here the husband had faithfully carried out the terms of the deed and paid his wife an allowance with which she was then satisfied. She was not satisfied now, but could he (his lordship) hold the husband guilty of any matrimonial offence? If he were to accede to the application, it would not be safe for any party to a separation deed to enter into such an agreement. It had been stated in *Diggins* v. *Diggins* [1927] P. 92, that it must not be supposed that there was an unlimited right in a wife under the Summary Jurisdiction (Married Women) Act, 1895, as amended in 1925, wherever she had entered into a deed, at her volition, to go to the justices to get the terms of the deed reviewed. Application refused.

APPEARANCES: *J. B. Latey* (*Peacock & Goddard*); *R. J. A. Temple* (*Hyde, Mahon & Pascall*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

COURT OF CRIMINAL APPEAL

CRIMINAL LAW: "ANTECEDENTS": OFFENCES TAKEN INTO CONSIDERATION INCLUDED

R. *v.* Vallett

Lord Goddard, C.J., Hilbery and Parker, JJ. 18th December, 1950

Appeal against sentence.

The appellant, a laundry supervisor, pleaded guilty before justices to four charges of larceny as a servant, and she asked for ninety-six other cases to be taken into consideration. The justices, being of opinion that the maximum sentence (twelve months' imprisonment) which they could pass was insufficient, committed her to quarter sessions for sentence under s. 29 (1) of the Criminal Justice Act, 1948. She appealed, contending that a person could only be committed to quarter sessions under that subsection where he had had previous convictions.

LORD GODDARD, C.J., giving the judgment of the court, said that the appellant, as a laundry supervisor, appointed to stop thefts, knew all the arrangements made to combat theft. In that position of trust she had on a hundred occasions stolen, for the most part one article at a time, until she had been able entirely to furnish her house with stolen linen. Section 29 (1) of the Act of 1948 enabled justices to remit cases to sessions for sentence where it appeared on conviction that the prisoner had had previous convictions; but it applied also in any case in which justices, on obtaining information as to the "character or antecedents" of the defendant, were of opinion that they were unable to pass an adequate sentence. The word "antecedents" was of as wide a meaning as could be conceived. If it had been intended by the Legislature that s. 29 (1) was only to apply where there had been previous convictions it could easily have made that clear. Appeal dismissed.

APPEARANCES: *M. C. Parker* (*Registrar, C.C.A.*); *L. K. E. Boreham* (*J. W. Bennett*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

CORRECTIVE TRAINING: CONSECUTIVE SENTENCES

R. *v.* Albury

Lord Goddard, C.J., Humphreys and Devlin, JJ.
29th January, 1951

Reference by the Home Secretary under s. 19 (*a*) of the Criminal Appeal Act, 1907.

The appellant was sentenced on 3rd November, 1949, to two years' corrective training on a charge of larceny. After he had been sentenced he confessed to other offences in which he had been concerned, and on 2nd March, 1950, he was accordingly sentenced to a further period of two years' corrective training, to begin at the end of the earlier sentence passed on him.

LORD GODDARD, C.J., said that, on a reference by the Home Secretary under the Act of 1907, the court had the same powers as on an appeal. Two questions arose: (1) whether, as a matter of law, a second sentence of corrective training could be passed to follow an existing sentence; and (2) whether, as a matter of discretion, the sentence in the present case should be altered. On the first question the court felt no difficulty because *R.* v. *Wilkes* (1770), 19 St. Tr. 1075, showed that a sentence of imprisonment to begin after the end of a previous sentence of imprisonment was good in law. The court thought that the reasoning in that case applied also to the case of a sentence of corrective training. On the question whether the court in its discretion should interfere with the sentence passed, they had said more than once that, as a general rule, it was desirable that a sentence of corrective training should not be one of less than three years, which meant that, if the prisoner behaved himself, he would not be detained for more than two years. They had no power to interfere by increasing the first sentence passed; but what they proposed to do was to alter the second sentence so that in fact the term which the appellant would serve would be equivalent to what he would have served if the original sentence on him had been one of three years. They therefore passed a sentence of two years, eight months in place of the second sentence passed, to run concurrently with the first sentence. Sentence varied.

APPEARANCES: *R. M. O. Havers* (*Registrar, C.C.A.*); *J. H. Buzzard* (*D.P.P.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of THE SOLICITORS' JOURNAL*]*

War Damage Payments

Sir,—While agreeing with your comment under this heading on p. 50 of the present volume, I would like to draw attention to one anomaly and serious injustice which still continues in connection with war damage payments.

Solicitors and other professional men were encouraged to pay premiums for business chattels insurance. Quite a number of claims were sent in and a great many of them are still outstanding. The only reply one can get on application for payment is that the Treasury has not yet fixed a date for payment of war damage claims under the business chattels scheme, but if it can be shown that chattels had been replaced a payment will be made on the basis that all percentage increase and interest will be lost to the claimant. This means that those who paid premiums are being kept waiting, while many who did not pay premiums were paid out without any delay. I wonder how many other solicitors are in the same position as myself.

London, E.C.4. M. C. BATTEN.

SURVEY OF THE WEEK

HOUSE OF LORDS

Progress of Bills

Read First Time :—

Liverpool Extension Bill [H.L.]	[31st January.
Lloyd's Bill [H.L.]	[31st January.
London County Council (Crystal Palace) Bill [H.L.]	[31st January.
Nottinghamshire County Council Bill [H.L.]	[31st January.
Oxford Motor Services Bill [H.L.]	[31st January.
Sunderland Corporation Bill [H.L.]	[31st January.
Swindon Corporation Bill [H.L.]	[31st January.
Uttoxeter Urban District Council Bill [H.L.]	[31st January.

Read Second Time :—

Baptist and Congregational Trusts Bill [H.L.]	[1st February.
Brighton Extension Bill [H.L.]	[31st January.
Bristol Corporation Bill [H.L.]	[1st February.
Canterbury Extension Bill [H.L.]	[1st February.
City of London (Central Criminal Court) Bill [H.L.]	[31st January.
Dartmouth Harbour Bill [H.L.]	[31st January.
Dee and Clwyd River Board Bill [H.L.]	[31st January.
Faversham Navigation Bill [H.L.]	[1st February.
Lancashire County Council (General Powers) Bill [H.L.]	[31st January.
Local Government (Scotland) Bill [H.C.]	[1st February.
Tithe Act, 1936 (Amendment) Bill [H.L.]	[1st February.

In Committee :—

Festival of Britain (Sunday Opening) Bill [H.C.]	[30th January.

HOUSE OF COMMONS

A. Progress of Bills

Read Second Time :—

Courts Martial (Appeals) Bill [H.C.]	[29th January.
Criminal Law Amendment Bill [H.C.]	[31st January.

Read Third Time :—

Penicillin (Merchant Ships) Bill [H.L.]	[29th January.

In Committee :—

Leasehold Property (Temporary Provisions) Bill [H.C.]	[31st January.

B. Debates

On the Committee Stage of the **Leasehold Property (Temporary Provisions) Bill,** Mr. Selwyn Lloyd introduced an amendment to cl. 1 designed to confine Pt. I of the Bill to ground leases. It was agreed there was a problem. By threatening to enforce a repairing covenant a landlord could exert considerable pressure on a tenant so far as the terms of renewal were concerned, and ultimately a tenant might find himself in the street without the opportunity of getting on to a housing list. The Opposition had a simpler and more effective method of dealing with the problem, however, than had the Government. On the Second Reading the Attorney-General had put forward two reasons for not confining the Bill to ground leases: firstly, the difficulty of finding a satisfactory definition of a ground rent, and secondly the unlikelihood of there being any leases for over twenty-one years other than building leases.

It was proposed to overcome the first difficulty by introducing the definition of a ground lease given in the Landlord and Tenant (War Damage) Act, 1939, viz.: "A lease at a rent (or, where the rent varies, at a maximum rent) which does not substantially exceed the rent which a tenant might reasonably have been expected, at the commencement of the term created by the lease, to pay for the land comprised in the lease, excluding any buildings, for a term equal to the term created by the lease." As to the second point, he was informed that in fact there was a considerable number of leases at a rack-rent for longer than twenty-one years, especially in London. Mr. Lloyd said the definition would exclude a certain number of long leases from the operation of the Act, which he believed the Government did not wish to bring within the Act.

The Attorney-General said the Government could not accept the amendment: the definition proposed was one inserted in the 1939 Act with considerable misgivings by the legislators of the day. By 1941 it had become completely unworkable, and the distinction between ground leases and other leases was abolished for the purposes of the 1939 Act. The definition opened up enormous possibilities of litigious controversy involving delay, expense and anxieties. There would be endless waste of time in the county courts and in the Court of Appeal trying to decide what valuation a present-day valuer ought to put on the market rent 100 years ago. This depended on so many circumstances—the state of the property, the surrounding physical conditions, the economic circumstances of the neighbourhood. Was the land to be regarded simply as a piece of rough land or as a prepared site? In any event the so-called definition excluded an "improved land rent," i.e., where a freeholder let to a holder at a true ground rent, who built a house and then took a small premium plus a larger rent to reward him for his labour.

In practice it was felt that the existing definition would catch a very small number of cases in which the house had been already built when the land was let.

Mr. Leslie Hale said the amendment was merely the first of a series designed to take more and more people outside the protection afforded by the Bill. Mr. Janner, opposing the amendment, said many people thought long-term leases—which were what the Bill was intended to deal with; not ground leases at all, but long-term leases—legitimately ripe for extension so that the tenants should not be thrown out. The idea of a twenty-one-year lease not being extended was a heavy burden indeed for long-leaseholders to bear. Now it was sought to curtail this to below twenty-one years and to houses let at a rent which was not in excess of two-thirds of the rateable value. Mr. Ungoed Thomas thought it unsound to rely, as Sir Patrick Spens had suggested, on building schemes for evidence of true ground leases. Not every ground lease fell within a building scheme, and he must know the difficulty of establishing a building scheme when, for instance, one was trying to establish the application of restrictive covenants dependent upon a lease.

Mr. John Hay suggested that if the Government would accept the definition it could be left to the courts to decide what was a ground rent. Mr. Turner-Samuels said the clause as it stood represented the absolute acceptable minimum. Tens of thousands of houses falling between the Rent Restrictions Acts and the protection given by the present Bill were not touched at all. Mr. Walker-Smith said his view was that the clause should confine its protection to occupying ground lessees and should contain the phrase "ground lease." Mr. Manningham-Buller thought as the words "ground leases" had been used in the King's Speech they ought to appear in the Bill. It was nonsense to suggest that practitioners such as lawyers and valuers were not capable of recognising the vast majority of ground leases immediately they saw them. On a division the amendment was defeated.

Next, Mr. Donnelly moved to extend the period of the "moratorium" from two years to five. Two years was far too short a period to enable one to plan one's life ahead, and if permanent legislation were contemplated it did not really matter whether the protection were for two years or for five. Mr. Molson opposed any extension. Two years was quite long enough for the Government to prepare the necessary amending legislation and for the landlord to be prevented from securing that his premises were put into a proper state of repair. Mr. Turner-Samuels also thought any extension would be most unfortunate. The factors in this matter were now fairly known and crystallised, and it was unthinkable that the period of doubt and uncertainty should be extended to five years. Mr. Leslie Hale said it was desirable to have long-term certainty in these matters. People were asked to take decisions and offered renewed terms long before the date on which their leases would actually expire.

The amendment was withdrawn on an assurance being given by the Attorney-General that—subject to the present Government's being in office—permanent legislation would be introduced within two years.

Mr. Selwyn Lloyd introduced an amendment designed to restrict those who would benefit under cl. 1 of the Bill to persons who had been in occupation or living in the premises for a qualifying period of three years. He could see no reason why the purchaser of the fag-end of a lease who knew perfectly well when

he bought that the lease was coming to an end should benefit as against the unfortunate reversioner who might have made plans on the basis of his getting back his property. There were no "just exceptions" at all in this Bill such as were found in the Rent Acts and the Landlord and Tenant Act, 1927. Mr. ENOCH POWELL, supporting, said the Bill had been described as aiming mainly at those who did not understand that they would lose their homes on the expiry of the ground lease. The buyer of the fag-end was the exact opposite of this, and yet he was protected. He would like a five- or six-year qualifying period. Protection should not be given those who bought fag-ends well knowing the housing situation in the last three years. Mr. GIBSON opposed the amendment. It would mean the eviction of a large number of families on the lapsing of a short lease. The reversioner usually already had a home to live in.

Mr. HARRISON thought there had been considerable pressure on the purchasers of fag-ends to buy them due to the housing shortage. They were often suffering far greater hardships than those who had held their leases for a long time. Mr. JOHN FOSTER said the Bill would protect the speculator who bought the tail-end of a lease, occupied part of the house himself and sub-let the rest at a very big profit rental. In some cases people had been pressed to take over these leases—they took over the repairing liabilities with the fag-end and had no intention of carrying them out. Rejecting the amendment, the ATTORNEY-GENERAL said if it could have been said that their possession of only a three-years' interest in the lease was due to action on the part of the reversioner and that extension of the period of the lease would alter the position of the reversioner to his detriment, then he would have understood the argument, but it was a matter of pure chance so far as the reversioner was concerned whether at any given moment the interest was held by a lessee who had been there for thirty years or for three. He did not think the clause would protect any speculator, but he would be glad to look at any statistics to support that point of view. The amendment was defeated on a division. [30th January.

On the motion for the adjournment Mr. UNGOED-THOMAS asked the Attorney-General to give as comprehensive a statement as possible with regard to his responsibility for prosecutions. Two views had been expressed—that the Attorney's powers should operate automatically, i.e., a prosecution should follow automatically on the commission of an offence, and that the Attorney should have a discretion. Clearly the latter was in fact the true position, but people were concerned to know the scope of the discretion involved and the principles on which it was exercised. A third matter in which the public was interested was the extent to which the Attorney-General consulted his colleagues or listened to his colleagues or took directions from his colleagues in deciding whether or not a prosecution should be proceeded with in a particular case, and how far was the discretion a judicial discretion exercised independently of political considerations.

Sir HARTLEY SHAWCROSS said that the exercise of discretion in a quasi-judicial kind of way as to whether or when he should enforce the criminal law was exactly one of the duties of the office of Attorney-General and Director of Public Prosecutions. It had never been the rule in this country that criminal offences must be automatically prosecuted. The dominant consideration was always whether the public interest required a prosecution. The Attorney was responsible for all the decisions of the Public Prosecutor and, as a Minister of the Crown, answerable to the House of Commons for any decision which he might make in a particular case.

Lord Simon had said: "There is no greater nonsense talked . . . than the suggestion that the Attorney-General ought to decide to prosecute merely because there is what the lawyers call 'a case.'" In deciding whether or not to prosecute only one consideration was altogether excluded, and that was the repercussion of a given decision upon his personal or his party's or his Government's political fortunes. That never came into account. Apart from that the Attorney-General might have to have regard to a variety of considerations—all of them leading to the question: was a prosecution in the public interest and in the interest of justice? Was the evidence sufficient to justify putting a man on trial? If not, it was not in the public interest to put him on trial. In other cases it was sometimes not in the public interest to go through the whole process of law, perhaps because of some mitigating circumstances or because of what the defendant had already suffered. Sometimes only a warning was needed.

Where questions of public policy of national or even international concern were involved the Attorney-General had to make up his mind not as a party politician, but in a quasi-judicial way to consider the effect of prosecution upon the administration of law and of government in the abstract rather than in any party sense. Usually the advice of the Director or of Treasury Counsel was taken and he rarely refused to prosecute when they advised prosecution. The question of the effect of the outcome of a prosecution, successful or unsuccessful, on morale and public order had also to be considered. To inform himself on this the Attorney-General might consult with any of his colleagues in the Government, though he did not have to do so. The responsibility for the decision lay on the Attorney's shoulders and he ought not to be and was not put under pressure by his colleagues. Lord Birkenhead and Lord Simon had both expressed the view that the Attorney-General should not accept orders from the Prime Minister or anyone else as to whether he should or should not prosecute.

With regard to prosecutions in respect of illegal strikes the law laid down by the National Arbitration Order was not always easy to apply in all industrial disputes in peace-time. Premature prosecution might impede negotiation and exacerbate the difficulties. It might make those prosecuted into martyrs in the eyes of their colleagues and thus produce still further disregard of the law instead of leading to its observance. He could not lay down in advance the rules which he would follow in these cases but he would not fail to prosecute in "appropriate cases" and at the appropriate time.

He had the other day decided that something published in a newspaper amounted legally to treason, but as at present advised he did not propose to prosecute. In some ways treason was akin to sedition, as Professor Dicey had said: "It could, if rigidly enforced, be inconsistent with the prevailing forms of political agitation."

In many statutes there was a provision that no prosecution should be launched without the consent of the Attorney-General or the Director of Public Prosecutions. This was to ensure that there were no automatic or frivolous or unnecessary prosecutions under the Acts. But where such a restriction did not exist any private person could set the criminal law in motion.

Summing up the whole matter he could only say that so long as he held the office he would try to continue to administer its duties in accordance with what appeared to him to be the public interest and would maintain if not strengthen the office in the promotion of justice as well as its traditional independence and integrity. Mr. MANNINGHAM-BULLER and other members congratulated Sir Hartley Shawcross on the impartiality and fairness with which he had conducted his office.

[29th January.

C. QUESTIONS

Mr. SHINWELL stated that probably not more than 7,000 or 8,000 deserters were still at large in this country. The true figure might well be smaller. [26th January.

The PRIME MINISTER stated that changes in the administrative arrangements in Wales consequential on the reorganisation of the functions of the Ministers of Town and Country Planning and of Health were under consideration. [29th January.

The MINISTER OF NATIONAL INSURANCE (Dr. SUMMERSKILL) stated that she proposed very shortly to introduce legislation to deal with the pre-1924 compensation cases.

[29th January.

Mr. G. BROWN stated that the enforcement of orders made under the Merchandise Marks Act, 1926, requiring retailers to have the country of origin shown on imported foodstuffs, including apples, was a matter for the local authority concerned. It was open to any body or person affected to take action under the Act.

[29th January.

Mr. DOUGLAS JAY said that the number of Statutory Rules, Orders and Instruments made since 1st August, 1945, up to 24th January, 1951, was 13,551. [29th January.

Mr. DALTON stated that he had already adopted some of the suggestions in the memorandum issued by the Royal Institution of Chartered Surveyors and entitled: "Defects of the Town and Country Planning Act and the Remedies." He was considering the other suggestions. [30th January.

Mr. GAITSKELL said he had no information as to how often in the past two years in the case of controlled companies within the meaning of s. 55 of the Finance Act, 1940,

it had been found on the death of the principal shareholder that the value of the assets, exclusive of shares in the company, had been insufficient to pay the death duties upon the whole estate, with the result that it had been necessary to break up the business concerned. [30th January.

Mr. WALKER-SMITH asked the Minister of Town and Country Planning on what principles he exercised his power to award costs under the Town and Country Planning Act, 1947. Mr. DALTON said that costs were only awarded in exceptional cases when it appeared to him that the planning authority had acted unreasonably. [30th January.

Mr. F. LONGDEN asked whether amending legislation would be introduced as soon as possible to remedy the injustice arising from the inadequate protection provided by the Hire Purchase Act, 1938, which, in maintaining the limit of protection at £100, took no account of the prevailing higher costs of household requisites. Mr. RHODES said he would bear this suggestion in mind, but before reaching any final decision as to what change or changes in the Act were desirable he would wish to ascertain the views of the trade bodies likely to be interested. [30th January.

The PRIME MINISTER, asked to state the Minister who had been or would be appointed the chairman of the committee appointed to study the whole field of leasehold reform, said the arrangements made by the Cabinet for the discharge of its collective responsibility were matters for the Cabinet itself, and it was not customary to disclose the membership of Cabinet committees. [30th January.

Mr. ARTHUR HENDERSON said that it was not considered necessary to take special steps to deal with civil liabilities such as hire purchase, etc., in the case of Class Z men called up for fifteen days only. In the case of those called up for longer periods appropriate action would be taken on compassionate grounds. [31st January.

The MINISTER OF HEALTH (Mr. MARQUAND) stated that, acting under s. 7 of the National Health Service Act, 1946, he had instructed benefactors under covenant to voluntary hospitals to pay future instalments due under their covenants direct to the Ministry of Health. He was advised that a person who had executed a deed of covenant had himself no power to cancel it. He hoped, therefore, that action in the courts to enforce compliance would not be necessary. [1st February.

The ATTORNEY-GENERAL said he had given anxious consideration to the question of the proposal of the *Daily Express* newspaper to take a public opinion poll on the merits of the unconfirmed finding and sentence passed by a court martial in Korea on Private Fargie. He could not help thinking that the legal status of these proceedings had been misunderstood. Once a court of justice had concluded its proceedings and a final decision had been given that decision was rightly open to public criticism and attack. It was equally important, however, that so long as a case was *sub judice* nothing should be done which might directly or indirectly tend to influence those whose duty it was to reach a judicial conclusion upon it. As the Lord Chancellor had recently stated in another place, a case tried by court martial remained *sub judice* until confirmation was complete, and any comment meantime was improper. Not only had the confirming authority to be completely free from outside pressure in reaching its decision, but it also had to be remembered that the authority might send a case back to the court martial itself for reconsideration of the finding and sentence or either of them. It followed that any attempt to organise public opinion in a manner calculated to influence either the confirming authority or the court was improper and might constitute both a contempt of court, and, in certain circumstances, a public mischief. In certain foreign countries trials were commenced or even partly conducted by means of popular and ill-informed clamour, but in this country judicial trials were conducted by those appointed to try cases in accordance with the law and on the sworn evidence before them.

In reply to a question by Mr. PAGET, Sir HARTLEY SHAWCROSS said he had no doubt that there was ample power to bring proceedings here for contempt of a court martial taking place outside this country. There were certainly precedents for proceedings for contempt of court in respect of a court martial at common law, and special procedure was provided under s. 126 of the Army Act which did not in any way prejudice the common law right to proceed for contempt. This was a British court of justice and he had no doubt that the High Court would protect it against contempt. [1st February.

Mr. CHUTER EDE said that the provisions of the Maintenance Orders (Facilities for Enforcement) Act, 1920, were applicable only to territories in the Commonwealth and did not apply to foreign countries. The Act therefore had no application to the position of the wives and families in Germany of ex-German prisoners of war now working in this country, who had been deserted. [1st February.

STATUTORY INSTRUMENTS

Act of Sederunt (Maintenance Orders Act, 1950, Rules), 1950. (S.I. 1950 No. 2144 (S. 145).)

Air Council (Membership, Business, etc.) Order, 1951. (S.I. 1951 No. 144.)

Bacon (Rationing) (Amendment) Order, 1951. (S.I. 1951 No. 117.)

Children and Young Persons (Contributions by Local Authorities) Regulations, 1951. (S.I. 1951 No. 113.)

Education (Scotland) Act, 1946 (Commencement No. 2) Order, 1951. (S.I. 1951 No. 110 (C.1) (S. 4).)

Floor Coverings (Control of Manufacture and Supply) (Amendment No. 2) Order, 1951. (S.I. 1951 No. 129.)

Import Duties (Exemptions) (No. 1) Order, 1951. (S.I. 1951 No. 107.)

Import Duties (Exemptions) (No. 2) Order, 1951. (S.I. 1951 No. 108.)

Draft **Leicestershire and Rutland Police** Amalgamation Scheme, 1951.

London-Great Yarmouth Trunk Road (Kelsale Diversion) Order, 1951. (S.I. 1951 No. 127.)

Maintenance Orders (Facilities for Enforcement) (Yukon Territory) Order, 1951. (S.I. 1951 No. 146.)

Merchant Shipping (Registration of Sierra Leone Government Ships) Order, 1951. (S.I. 1951 No. 143.)

Milk (Control and Maximum Prices) (Great Britain) (Amendment) Order, 1951. (S.I. 1951 No. 138.)

Oils and Fats (Amendment No. 2) Order, 1951. (S.I. 1951 No. 125.)

Retention of Cables under Highways (Lincoln–Parts of Kesteven) (No. 1) Order, 1951. (S.I. 1951 No. 133.)

Retention of Cables under and over Highways (Essex) (No. 1) Order, 1951. (S.I. 1951 No. 103.)

Retention of Mains, Cables and Pipe under and over Highways (Cambridgeshire) (No. 1) Order, 1951. (S.I. 1951 No. 100.)

Retention of Pipe under Highway (Cambridgeshire) (No. 2) Order, 1951. (S.I. 1951 No. 105.)

Retention of Railway across Highway (Lancashire) (No. 1) Order, 1951. (S.I. 1951 No. 132.)

Savings Certificates (Amendment) Regulations, 1951. (S.I. 1951 No. 154.)

Soft Drinks (Amendment) Order, 1951. (S.I. 1951 No. 137.)

Stopping up of Highways (Devon) (No. 1) Order, 1951. (S.I. 1951 No. 101.)

Stopping up of Highways (Devon) (No. 2) Order, 1951. (S.I. 1951 No. 102.)

Stopping up of Highways (East Riding of Yorkshire) (No. 1) Order, 1951. (S.I. 1951 No. 106.)

Stopping up of Highways (Hertfordshire) (No. 1) Order, 1951. (S.I. 1951 No. 121.)

Stopping up of Highways (Wiltshire) (No. 1) Order, 1951. (S.I. 1951 No. 119.)

Stopping up of Highways (Wiltshire) (No. 2) Order, 1951. (S.I. 1951 No. 120.)

Draft **Summer Time** Order, 1951.

Superannuation (Civil Servants and Teachers) Amending Rules, 1951. (S.I. 1951 No. 141.)

Transfer of Functions (Minister of Health and Minister of Local Government and Planning) (No. 1) Order, 1951. (S.I. 1951 No. 142.)

Tuberculosis (Bute No. 1 Attested Area) Order, 1951. (S.I. 1951 No. 136.)

Tuberculosis (Isles of Scilly Attested Area) Order, 1951. (S.I. 1951 No. 135.)

Tuberculosis (Zetland Attested Area) Order, 1951. (S.I. 1951 No. 134.)

Utility Mattresses, Pillows and Bolsters (Manufacture and Supply) Order, 1951. (S.I. 1951 No. 87.)

Utility Mattresses, Pillows and Bolsters (Maximum Prices) Order, 1951. (S.I. 1951 No. 86.)

Utility Quilts (Manufacture and Supply) Order, 1951. (S.I. 1951 No. 89.)

Utility Quilts (Maximum Prices) Order, 1951. (S.I. 1951 No. 88.)

NOTES AND NEWS

Honours and Appointments

The Hon. Mr. Justice KARMINSKI has been elected a Master of the Bench of the Inner Temple and Mr. E. C. S. WADE, Downing Professor of the Laws of England, has been elected an Honorary Master of the Bench.

Mr. J. W. S. SPRIGGE, solicitor, has been appointed an assistant secretary to the Chartered Auctioneers' and Estate Agents' Institute.

The Lord Chancellor has reappointed the following to be Chairmen of Agricultural Land Tribunals for a further period of three years from the 1st March, 1951: Major G. D. ANDERSON (Northern Area), Mr. MYLES ARCHIBALD (Yorkshire and Lancashire Division), Mr. W. KELLY CARTER (East Midland Area), Mr. NORMAN A. CARR (West Midland Area), Sir LEONARD COSTELLO, C.B.E. (South Western Area), Mr. L. K. A. BLOCK (South Eastern Area), Sir CECIL OAKES, C.B.E. (Eastern Area), Mr. S. J. H. EVANS (Wales and Monmouth Area).

Miscellaneous

PROCEDURE AT INQUESTS

A committee under the chairmanship of Sir AUSTIN JONES has been appointed by the Lord Chancellor and the Home Secretary to make recommendations concerning rules to be made under s. 26 of the Coroners (Amendment) Act, 1926, and forms to be prescribed under s. 27. Section 26 regulates practice and procedure at inquests and *post-mortem* examinations. The other members are: Sir Leslie Brass, legal adviser to the Home Office (deputy chairman), Mr. C. D. Aarvold, Dr. F. E. Camps, Mr. W. C. Crocker, Mr. H. Dale, Mr. D. W. Dobson, Dr. R. Forbes, Dr. W. R. Heddy and Mr. G. Tudor. The committee invites the submission of written evidence, which should be sent before the end of February to the Secretary of the committee, Mr. H. W. Wollaston, Home Office, London, S.W.1.

A course of three public lectures entitled "Law and Justice" will be given by Professor Harold Potter, LL.D., Ph.D., at King's College, Strand, at 5.30 p.m., on Mondays, 19th and 26th February and 5th March. Admission is free, without ticket.

THE LAW SOCIETY—HONOURS EXAMINATION

At the November, 1950, examination for Honours of candidates for admission on the Roll of Solicitors of the Supreme Court, the examination committee recommended the following as being entitled to honorary distinction:—

Second Class (in alphabetical order).—R. J. Barnes, L. N. Brown, M.A., LL.B. Cantab., D. D. de Carle, L. M. Doffman, LL.B. Lond., R. H. Glick, LL.B. Lond., G. Guest, B.A. Cantab., R. O. Hibbert, M.A. Cantab., A. C. Humphries, B.A. Cantab., N. A. H. James, LL.B. Lond., J. B. E. F. Lansdell, R. R. Pennington, LL.B. Birmingham, A. J. Quinton, LL.B. Lond., C. A. Walsh, LL.M. Lond.

Third Class (in alphabetical order).—D. McM. Anderson, R. R. H. Ball, LL.B. Liverpool, N. J. Heaney, LL.B. Lond., J. D. Porter, A. T. R. Robinson, B.A., LL.B. Cantab., H. A. L. Rossi, LL.B. Lond., L. E. Vickers, LL.B. Lond., J. L. Webb, M.A. Oxon, G. B. M. Williams, LL.B. Wales.

The Council of The Law Society have given class certificates to the candidates in the second and third classes. Ninety-seven candidates gave notice for examination.

The Legal and General Assurance Society, Ltd., have announced an increase of 5s. per £100 purchase money in their immediate annuity rates as from 1st February, 1951.

NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1949. NATIONAL PARKS COMMISSION

THE LAKE DISTRICT NATIONAL PARK (DESIGNATION) ORDER, 1951

The above order was made on 30th January, 1951, and is to be submitted to the Minister of Town and Country Planning for confirmation. Its effect will be to constitute land in the counties of Cumberland, Lancaster and Westmorland a National Park. It comprises land within the under-mentioned districts: The urban district of Keswick, the rural district of Cockermouth, the rural district of Ennerdale, the rural district of Millom, the rural district of Penrith, the rural district of Wigton, the rural district of Ulverston, the urban district of Lakes, the urban district of Windermere, the rural district of North Westmorland and the rural district of South Westmorland.

A certified copy of the order and map will be open for public inspection at the offices of the councils of each of the authorities mentioned above, free of charge, between 9 a.m. and 5 p.m. on weekdays, except Saturdays, and 9 a.m. and 12 noon on Saturdays, and at the offices of the National Parks Commission, Devonshire House, Mayfair Place, London, W.1, between 9.30 a.m. and 5 p.m. on weekdays, except Saturdays, and 9.30 a.m. and 12 noon on Saturdays. Any objection or representation with reference to the order may be sent in writing to the Secretary, Ministry of Town and Country Planning, 23 Saville Row, London, W.1, before the 17th March, 1951, stating the grounds on which it is made.

LOCAL AUTHORITIES AND ADVERTISERS

Ministry of Local Government and Planning Circular No. 1, "Advertisements Applications," addressed to all local authorities in England and Wales, calls for more informal contact between the authorities themselves and advertisers.

It is hoped that this will lead to a reduction in the number of advertisement appeals. Since the Town and Country Planning (Control of Advertisements) Regulations came into force on 1st August, 1948, more than 2,000 appeals against decisions of local authorities refusing permission for outdoor advertisements have been made.

The importance of discussion between authorities and advertisers before a formal application for permission to put up advertisements is made is particularly stressed in the circular. At this stage the authority will often be able to indicate to the applicant the type of proposal which would not be objected to.

Appeals arising from cases in which consent is made subject to conditions could often be avoided, it is stated, if the conditions were discussed with the advertiser before the issue of a formal decision.

Wills and Bequests

Mr. S. H. Easterbrook, solicitor, of Torquay, left £145,467.

Mr. P. F. Lever, solicitor, of Bolton, left £60,505 (£59,725 net).

Alderman A. E. Masser, solicitor, of Leeds, left estate "so far as at present can be ascertained" valued at £27,829 (£27,487 net).

Mr. T. Oerton, solicitor, of Bideford, left £5,141 (£4,772 net).

Mr. E. J. C. Savory, solicitor, of Alton, left £39,133 (£38,904 net).

Mr. George Tutin, solicitor, of Nottingham, left £21,235.

OBITUARY

MR. W. A. GUEST

Mr. William Arthur Guest, solicitor, of Bedford, died on 29th January, aged 58. He was admitted in 1916.

MR. L. H. HOUSE

Mr. Lancelot Harold House, solicitor, of Sevenoaks, died recently, aged 46. He was admitted in 1927.

MR. W. E. KERSEY

Mr. William Edward Kersey, solicitor, of Ipswich, died on 26th January, aged 91. He had been in good health, but collapsed after hearing of the illness of his partner, Col. F. L. Tempest, who died earlier the same week. Admitted in 1881, Mr. Kersey would have completed 70 years as a practising solicitor next April. He was at one time an Ipswich Borough Councillor and Governor of the East Suffolk and Ipswich Hospital.

MR. G. M. G. MITCHELL

Mr. George Mathew Guy Mitchell, solicitor, of Shrewsbury, died on 1st February, aged 76. Admitted in 1897, he was deputy coroner for the Borough of Shrewsbury and the Ford Division of the county.

MR. J. E. RAY

Mr. John Ernest Ray, solicitor, of Hastings, has died at the age of 78. He was admitted in 1896.

MR. J. T. ROBERTS

Mr. John Trevor Roberts, solicitor, of Caernarvon, died on 31st January, aged 77. Admitted in 1896, he had been clerk to the justices for Caernarvon County Division since 1911. He was a past President of the Chester and North Wales Law Society.

MR. E. J. SMITH

Mr. Ernest James Smith, solicitor, of Princess Street, Manchester, died on 23rd January. He was admitted in 1906.

MR. F. SMITH

Mr. Frederick Smith, solicitor, of Newcastle-on-Tyne, has died, aged 59. He was admitted in 1923.

MR. F. C. SMITH

Mr. Frederick Charles Smith, of Bodicote, who would this month have completed his fiftieth year with Messrs. Fairfax, Barfield and Co., of Banbury, died recently.

COL. F. L. TEMPEST

Colonel Francis Lewis Tempest, O.B.E., M.C., D.L., B.A., solicitor, of Ipswich, died on 23rd January, aged 57. Admitted in 1924, he was a past President of the Suffolk and North Essex Law Society and was appointed a Deputy Lieutenant of Suffolk in 1949.

MR. A. K. WHITAKER

Mr. Alfred Kidd Whitaker, solicitor, of Blackpool, has died at the age of 73. He was admitted in 1901, and was for some years a member of Poulton Borough Council.

SOCIETIES

INNER TEMPLE

The Treasurer (Sir Alfred Bucknill) and Masters of the Bench of the Inner Temple entertained the following guests at dinner on the Grand Day of Hilary Term: Sir Raymond Evershed (Master of the Rolls), Sir Hartley Shawcross, K.C., M.P. (Attorney-General), Sir Francis Floud, the Dean of Westminster, Sir Alfred Egerton, F.R.S., the President of the Royal Academy, Sir Charles Tennyson, Major-General J. A. Gascoigne (General Officer Commanding, London District), Prebendary A. J. Macdonald, Captain G. Curteis, R.N., Mr. D. C. Somervell, Lieutenant-Colonel J. A. G. Scott (Commanding the Inns of Court Regiment), Mr. Geoffrey Evans, the Reader at the Temple Church, and the Sub-Treasurer.

At the annual general meeting of the HARROGATE AND DISTRICT LAW SOCIETY the following officers were elected: President, Mr. W. E. Woods, LL.B.; Hon. Treasurer, Mr. C. E. Atkinson; Hon. Secretary, Mr. E. W. Fedden, M.A. Cantab.; Librarian, Mr. B. McCall, M.A. Cantab. Messrs. J. E. Atkinson, W. K. Robinson and A. S. Thompson were elected to the Committee. Mr. C. K. Phillips was elected as representative of the Yorkshire Union of Law Societies.

Mr. Justice Lynskey, Mr. Justice Finnemore, Sir Leonard Holmes and Mr. Paul E. Sandlands, Recorder of Birmingham, were guests at the annual dinner of the LEICESTER LAW SOCIETY, on 29th January.

At the annual general meeting of the SOUTHPORT AND ORMSKIRK INCORPORATED LAW SOCIETY on 26th January, Mr. W. D. Briscombe was elected President, Mr. C. D. Watson Vice-President, Mr. E. W. Mawdsley Hon. Secretary, and Mr. C. D. Watson Hon. Treasurer.

The UNION SOCIETY OF LONDON (meetings in the Common Room, Gray's Inn, at 8 p.m.) announce the following subjects for debate in February, 1951: Wednesday, 14th February—"That the rearming of Western Germany is expedient"; Wednesday, 21st February—"That this House deplores the holding of the Festival of Britain." Joint debate with the United Law Society: Wednesday, 28th February—"That the increase of feminine influence is due more to the deterioration of men than to the improvement of women." The annual ladies' night debate will be held on Tuesday, 20th March, 1951, at which the Marquess of Reading, K.C., will be one of the principal speakers.

An ordinary meeting of THE MEDICO-LEGAL SOCIETY will be held at Manson House, 26 Portland Place, W.1 (Tel. Langham 2127), on Thursday, 22nd February, 1951, at 8.15 p.m., when a paper will be read by Professor Sir Sydney Smith, C.B.E., M.D., F.R.C.P.Ed., F.R.S.Ed., on "The Medico-Legal Institute and the Problem of Crime."

CASES REPORTED IN VOL. 95

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